

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of
JOHN PHELPS,

For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules

Petitioner,

Index No.

-against-

VERIFIED PETITION

STATE OF NEW YORK-UNIFIED COURT SYSTEM,

Respondent.

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Petitioner John Phelps, by his attorneys, Clifton Budd & Demaria, LLP, as and for his Verified
Petition, pursuant to Article 78 of the CPLR, alleges as follows:

1. The Verified Petition is submitted in support of Petitioner's application for an Order and Judgment, pursuant to Article 78 of the Civil Practice Law and Rules, vacating the determination of the UCS, per George J. Silver, Deputy Chief Administrative Judge dated May 9, 2019, which terminated his employment, on the ground that it is arbitrary and capricious and the penalty of discharge was an abuse of discretion.

THE PARTIES

2. The Petitioner, John Phelps, was employed as a Principal Court Reporter and Senior Court Reporter by the respondent State of New York-Unified Court System ("UCS") from 1998 until his termination on May 9, 2019.

3. Respondent State of New York-Unified Court System ("UCS") is an agency of The State of New York and is established pursuant to the Judiciary Law and other relevant laws and regulations. The UCS, through its Office of the Court Administration ("OCA"), operates under

the direction of the Chief Administrative Judge. UCS is, and was at all times relevant to this proceeding, a “public employer” under the New York State Public Employees’ Fair Employment Act (commonly referred to as the “Taylor Law”).

STATEMENT OF FACTS

4. On May 9, 2019 Petitioner was terminated from his non-competitive position as a Principal Court Reporter and, in turn, his competitive position as a Senior Court Reporter. As may be seen from the Directive 16 of Deputy Chief Administrative Judge George J. Silver, which is appended to the Affidavit of John Phelps as Exhibit A, Judge Silver concurred with the Report and Recommendation of Judicial Hearing Officer Joseph Fisch (“J.H.O. Fisch”), dated March 15, 2019 (Exhibit B), in terminating the services of Mr. Phelps. That Report and Recommendation stemmed from the holding of a hearing by J.H.O. Fisch on December 11, 2018 and December 12, 2018. The transcript of that hearing, and the evidence submitted therein, are attached hereto as Exhibit C, and made a part herein as if fully set forth and rewritten herein.

5. As more fully set forth during the hearing in this proceeding, Mr. Phelps began his employment as a Senior Court Reporter in 1998, and he was thereafter appointed as a Principal Court Reporter by OCA in 2011. That position had also been applied for by four (4) other Senior Court Reporters, and his appointment, it is respectfully submitted, confirmed that there had been no issues whatsoever with his performance prior to his appointment. In fact, he had never received any notice, counselling, or discipline relating to his performance at any time prior to the Notice of Charges which had been levelled against him on March 27, 2018. (Exhibit D, Exh. 1). Mr. Phelps thereafter responded to those Charges with an Answer on April 27, 2018. (Exhibit E).

6. Having been appointed in 2011 as Principal Court Reporter, Mr. Phelps supervised approximately 60 Senior Court Reporters in four (4) different Courthouses within New York County. At times, in addition to acting as a Principal Court Reporter, Mr. Phelps took copy in the

Courtroom, although his Courtroom work was extremely limited, and that work did not interfere with his supervisory duties.

7. On November 13, 2017 Mr. Phelps met with Mr. Cosmas Grant, a representative of the Inspector General's Office of OCA, and Mr. Phelps responded forthrightly to questions about the issues Mr. Grant raised. Thereafter, however, Charges were levelled against Mr. Phelps, despite the fact that he had never been on notice that his performance was somehow lacking — in fact, with respect to the ultimate Charges levelled against him OCA had, in most instances, authorized the very practice that OCA thereafter held to be somehow inappropriate.


8. Because the complete, factual underpinning of the Charges, and the evidence related to those Charges, was set forth during the hearing before J.H.O. Fisch, Petitioner is adopting that evidence and testimony (Exhibit C) herein. In the event that the Court determines that Judge Silver's Determination should be vacated, Mr. Phelps respectfully requests reinstatement to his former position, or as a Senior Court Reporter.

9. No previous application has been made for the relief or judgment sought herein.

WHEREFORE, Petitioner prays for judgment pursuant to Article 78 of the Civil Practice Law and Rules: (i) annulling the May 9, 2019 determination of Deputy Chief Administrative Judge George J. Silver; (ii) directing that the matter be expunged from Petitioner's employment record with the State of New York; (iii) restoring Petitioner's employment status be to what it was prior to Petitioner's termination, or in the alternative, pursuant to the Rules of the Chief Judge, restoring Petitioner to the position of Senior Court Reporter; (iv) restoration of all seniority and benefits, and compensation for lost wages; and (v) for such other and further relief as this Court may deem just, proper and equitable.

Dated: New York, New York
August 5, 2019

CLIFTON BUDD & DeMARIA, LLP
Attorneys for the Petitioner

Handwritten signature of Douglas P. Catalano in blue ink, written over a horizontal line.

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VERIFICATION

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)


JOHN PHELPS, the undersigned, being duly sworn, deposes and says:

I am the Petitioner in this proceeding. I have read the foregoing Petition and know the contents thereof, the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.


I swear that the foregoing statements are true, under the penalties of perjury.


JOHN PHELPS

Sworn to before me this
29 day of July 2019


Notary Public

WILLIAM BARRETTA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 08/08/2022


JULY 29, 2019

